



**Kilundu v Republic (Criminal Miscellaneous Application  
E006 of 2025) [2026] KEHC 3888 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3888 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL MISCELLANEOUS APPLICATION E006 OF 2025**

**JN KAMAU, J  
MARCH 18, 2026**

**BETWEEN**

**PETER KILUNDU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant herein was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya). He, however, later entered into a Plea Agreement whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and sentenced him to eighteen (18) years imprisonment.
2. On 16<sup>th</sup> January 2025, he filed a Notice of Motion application dated 7<sup>th</sup> January 2025 seeking a review of his sentence. He urged this court to grant him one third (1/3) of his sentence pursuant to Paragraph 4.3.1 to 4.3.8 of the Sentencing Policy Guidelines Revised 2023 (sic).
3. His Written Submissions were dated 12<sup>th</sup> June 2024 and filed on 20<sup>th</sup> June 2025 while those of the Respondent were dated 8<sup>th</sup> July 2025 and filed on 15<sup>th</sup> July 2025. The Ruling herein is based on the said Written Submissions which both parties relied upon in their entirety.

**Legal Analysis**

4. The Applicant invoked Articles 24(1)(e), 25(c), (p) and 29(f) and 50 of *the Constitution* of Kenya, 2010, Section 26(2) of the Penal Code, Section 216, 323 and 329 of the Criminal Procedure Code and Paragraph 4.3-4.3.5 of the Sentencing Policy Guidelines (SPG's) revised 2023 and cited the parable of the prodigal son in the Bible and pleaded for the court's mercy and grace.



5. He contended that he was a young man during the omission of the offence and that his actions were influenced by peer pressure. He asserted that he plea bargained thus saving the public, time and money on investigations and trial. He argued that a reduction of sentence should always follow a plea of guilty. He cited Paragraph 4.8.16 (iv) of the Sentencing Policy Guidelines Revised 2023 and argued that although the Trial Court arrived at an appropriate sentence of eighteen (18) years on his part, it did not consider the one third (1/3) reduction on the said sentence.
6. He asserted that he was a first offender and was rehabilitated, reformed and socially re-adapted. He urged the court to reduce his current sentence to a lesser sentence.
7. On its part, the Respondent opposed the Applicant's application stating that the Applicant was given an opportunity to mitigate at trial stage and that the Probation Pre-sentence Report was not favourable but the court still granted a lenient sentence. It asserted that the one third (1/3) reduction principle as stated in the Sentencing Policy Guidelines was a principle meant to ensure sentences were fair, proportionate to the crime and taking into account mitigating factors. It added that the said principle was not mandatory reduction and the court had the discretion to apply the principle.
8. It placed reliance on the case of *Republic vs Jagani & Another* (2001) KLR 590 where it was held that the purpose of sentence was usually to assist in rehabilitation of offenders. It argued that the sentence meted out on the Applicant was to instil a sense of responsibility for his actions and also allow for his rehabilitation.
9. It further submitted that this court lacked the jurisdiction to review his sentence as it had heard and determined the same. In this regard, it relied on the case of *John Kagunda Kariuki vs Republic* [2019]eKLR where it was held that the applicant's appeal had been heard at the High Court and he could not go back to the same court for review of his sentence. It added that he was at liberty to make an argument for reduced sentence at the Court of Appeal.
10. It invoked Article 165 of *the Constitution* of Kenya, 2010 and Sections 362 and 364 of the Criminal Procedure Code and submitted that the powers of the High Court on review were to be exercised only over subordinate courts and not over the High Court with respect to its own decisions. It asserted that the Applicant was circumventing the due process instead of filing an appeal. It urged the court to dismiss his application for lack of merit.
11. Notably, Paragraph 4.3.6 of the Sentencing Policy Guidelines Revised 2023 provides:-
  6. Where courts are satisfied that it is safe to accept a plea of guilty, they should grant a discount after considering the appropriate sentence based on culpability and harm specific to the offence alongside other aggravating and mitigating features. Once the court has arrived at that sentence, a discount of up to one third of the sentence should be applied where the offender has pleaded guilty at the earliest opportunity. Thereafter, e.g., where an offender has pleaded guilty just before, or during trial, a lesser reduction may be afforded.
12. Section 46 of the *Prisons Act*, Cap 90 (Laws of Kenya) provides as follows:-
  1. Convicted criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one-third of their sentence or sentences.  
 Provided that in no case shall —
    - i. any remission granted result in the release of a prisoner until he has served one calendar month;



- ii. any remission be granted to a prisoner sentenced to imprisonment for life or for an offence under section 296(1) of the Penal code or to be detained during the President's pleasure.
  2. For the purpose of giving effect to the provisions of subsection (1), each prisoner on admission shall be credited with the full amount for remission to which he would be entitled at the end of his sentence if he lost no remission of sentence.
  3. A prisoner may lose remission as a result of its forfeiture for an offence against prison discipline, and shall not earn any remission in respect of any period —
    - a. spent in hospital through his own fault; or
    - b. while undergoing confinement as a punishment in a separate cell.
  4. A prisoner may be deprived of remission —
    - a. where the Commissioner considers that it is in the interests of the reformation and rehabilitation of the prisoner;
    - b. where the Cabinet Secretary for the time being responsible for internal security considers that it is in the interests of public security or public order.
  5. Notwithstanding the provisions of subsection (1) of this section, the Commissioner may grant a further remission on the grounds of exceptional merit, permanent ill-health or other special ground.”
13. This court noted that apart from applying to reduce his sentence to a least severe sentence, the Applicant was also seeking remission. On 14<sup>th</sup> May 2025, No 39338 PC Ondimu, confirmed to this court that remission was normally given to convict persons when calculating their sentences. Indeed, convicted persons who were serving a fixed or definite or determinate period of imprisonment were entitled to remission of their sentences in accordance with the provisions of Section 46 of the [Prisons Act](#).
14. Be that as it may, this court agreed with the Respondent’s submissions that it had no jurisdiction to review the Applicant’s sentence as it was the same court that had heard and finally determined his case. In Paragraph 32 of its decision that was delivered on 13<sup>th</sup> June 2024, this court rendered itself as follows:-
- “... a sentence of eighteen(18) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Agreement. If the matter had proceeded as a murder trial, this court would have meted upon him a stiffer sentence as there were aggravating circumstances in this case...”
15. The only option that the Applicant, therefore, had was to lodge an appeal or review at the Court of Appeal. Indeed, Article 50(2)(q) of [the Constitution](#) of Kenya, 2010 provided that if an accused was convicted, he/she had the right to appeal to, or apply for review by, a higher court as prescribed by law.

### **Disposition**

16. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Notice of Motion application dated 7<sup>th</sup> January 2025 and filed on 16<sup>th</sup> January 2025 was not merited and the same be and is hereby dismissed.



17. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 18<sup>TH</sup> DAY OF MARCH 2026**

**J. KAMAU**

**JUDGE**

